



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2013-0556, FRL-9941-54-Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} National Ambient Air Quality Standards; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of Montana to demonstrate the State meets infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008, lead (Pb) on October 15, 2008, nitrogen dioxide (NO₂) on January 22, 2010, sulfur dioxide (SO₂) on June 2, 2010 and fine particulate matter (PM_{2.5}) on December 14, 2012. EPA is also proposing to approve 110(a)(2)(D)(ii) for the 1997 and 2006 PM_{2.5} NAAQS. EPA is proposing to conditionally approve CAA section 110(a)(2)(C) and (J) with regard to PSD and element 3 of 110(a)(2)(D)(i)(II) for the 2008 ozone, 2008 Pb, 2010 NO₂, 2010 SO₂, and 2006 and 2012 PM_{2.5} NAAQS. EPA is proposing to disapprove element 4 of CAA section 110(a)(2)(D)(i)(II) for the 2008 ozone, 2010 NO₂, 2010 SO₂, and 2006 and 2012 PM_{2.5} NAAQS. EPA is proposing to approve SIP revisions the State submitted to update Montana's PSD program and provisions regarding state boards. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2013-0556 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you

claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On March 12, 2008, EPA promulgated a new NAAQS for ozone, revising the levels of

the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436, March 27, 2008). Subsequently, on October 15, 2008, EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$ (73 FR 66964, Nov. 12, 2008). On January 22, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb) while retaining the annual standard of 53 ppb. The 2010 NO_2 NAAQS is expressed as the three-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. The secondary NO_2 NAAQS remains unchanged at 53 ppb (75 FR 6474, Feb. 9, 2010). On June 2, 2010, the EPA promulgated a revised primary SO_2 standard at 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520, June 22, 2010). Finally, on December 14, 2012, the EPA promulgated a revised annual $\text{PM}_{2.5}$ standard by lowering the level to 12.0 $\mu\text{g}/\text{m}^3$ and retaining the 24-hour $\text{PM}_{2.5}$ standard at a level of 35 $\mu\text{g}/\text{m}^3$ (78 FR 3086, Jan. 15, 2013).

EPA promulgated a revised NAAQS for $\text{PM}_{2.5}$ on October 17, 2006, tightening the level of the 24-hour standard to 35 $\mu\text{g}/\text{m}^3$ and retaining the level of the annual $\text{PM}_{2.5}$ standard at 15 $\mu\text{g}/\text{m}^3$. EPA approved the CAA section 110(a)(2)(D)(i)(I) portion of Montana's infrastructure SIP for this NAAQS on July 30, 2013 (78 FR 45869). As discussed below, CAA section 110(a)(2)(D)(i)(I) covers elements 1 and 2 of "interstate transport." In this proposed action, EPA is addressing only interstate transport elements 3 and 4 from CAA section 110(a)(2)(D)(i)(II) for the 2006 $\text{PM}_{2.5}$, 2008 ozone, 2010 SO_2 and 2012 $\text{PM}_{2.5}$ NAAQS. We are not addressing elements 1 and 2 for the 2008 ozone, 2010 SO_2 and 2012 $\text{PM}_{2.5}$ NAAQS in this action. These elements

will be addressed in a later rulemaking action.¹

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for PM_{2.5}, ozone, Pb, NO₂, and SO₂ already meet those requirements. EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards” (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 PM_{2.5} NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)” (2009 Memo), followed by the October 14, 2011, “Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)” (2011 Memo). Most recently, EPA issued “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)” on September 13, 2013 (2013 Memo).

¹ EPA proposed approval of elements 1 and 2 of Montana’s SIP for the 2008 ozone NAAQS in a notice published November 23, 2015 (80 FR 72937).

III. What is the Scope of this Rulemaking?

EPA is acting upon the SIP submissions from Montana that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone, 2008 Pb, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of title I of the CAA; “regional haze SIP” submissions required by EPA rule to address the visibility protection requirements of CAA section 169A; and nonattainment new source review (NSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP

submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.² EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

Examples of some of these ambiguities and the context in which EPA interprets the ambiguous portions of section 110(a)(1) and 110(a)(2) are discussed at length in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM_{2.5}, 2008 Lead, 2008 Ozone, and 2010 NO₂ National Ambient Air Quality Standards; South Dakota (79 FR 71040 Dec. 1, 2014) under “III. What is the Scope of this Rulemaking?”

With respect to certain other issues, EPA does not believe that an action on a state’s infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state’s existing SIP. These issues include: (i) existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that

² For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186, Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007 ("NSR Reform").

IV. What Infrastructure Elements are Required Under Sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.

- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) section 110(a)(2)(C) to the extent it refers to permit programs (known as “nonattainment NSR”) required under part D, and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I). Furthermore, EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title 1 of the CAA are not changed by a new NAAQS.

V. How Did Montana Address the Infrastructure Elements of Sections 110(a)(1) and (2)?

The Montana Department of Environmental Quality (Department or MDEQ) submitted

certification of Montana's infrastructure SIP for the 2008 Pb NAAQS on December 19, 2011, 2008 ozone NAAQS on January 3, 2013, 2010 NO₂ NAAQS on June 4, 2013, 2010 SO₂ NAAQS on July 15, 2013, and 2012 PM_{2.5} on December 17, 2015. Montana's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS. These plans reference the current Administrative Rules of Montana (ARM) and Montana Code Annotated (MCA). These submittals are available within the electronic docket for today's proposed action at www.regulations.gov. The ARM and MCA referenced in the submittals are publicly available at <http://www.mtrules.org/> and http://leg.mt.gov/bills/mca_toc/index.htm. Montana's SIP, air pollution control regulations, and statutes that have been previously approved by EPA and incorporated into the Montana SIP can be found at 40 CFR 52.1370.

VI. Analysis of the State Submittals

1. **Emission limits and other control measures:** Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

Specific control measures adopted in Board of Environmental Review (BER) orders and multiple SIP-approved state air quality regulations within the ARM and cited in Montana's certifications provide enforceable emission limitations and other control measures, means of techniques, schedules for compliance, and other related matters necessary to meet the

requirements of the CAA section 110(a)(2)(A) for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS, subject to the following clarifications.

First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS. Montana's certifications (contained within this docket) generally list provisions and enforceable control measures within its SIP which regulate pollutants through various programs, including its stationary source permit program which requires sources to demonstrate emissions will not cause or contribute to a violation of any NAAQS (ARM 17.8.749). This suffices, in the case of Montana, to meet the requirements of section 110(a)(2)(A) for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

Second, as previously discussed, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states, including Montana, have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM of operations at a facility. A number of states, including Montana, have SSM provisions which are contrary to the CAA and existing

EPA guidance³ and the agency is addressing such state regulations separately (80 FR 33840, June 12, 2015).

Therefore, EPA is proposing to approve Montana's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS with respect to the general requirement in section 110(a)(2)(A) to include enforceable emission limitations and other control measures, means, or techniques to meet the applicable requirements of this element.

2. **Ambient air quality monitoring/data system:** Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to "(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator."

On an annual basis, the Department evaluates trends in industrial and economic development, meteorology, and population growth, and conducts other scientific, social, and geographic observations regarding areas of the State which may be adversely affected by the impact of criteria pollutants. The Department, with participation and input from local county air pollution control program staff and other interested persons, develops decisions regarding monitor type, location, and schedules for monitoring air quality in these hotspots. Montana's annual monitoring network plan (AMNP), is made available by the Department for public review and comment prior to submission to EPA. EPA approved 2015 network changes through an AMNP response letter (contained within the docket) mailed to the Department on November 25, 2015.

³ Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, "State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown." (September 20, 1999).

Further, in accordance with 40 CFR 58.10, beginning in July 2008, and every five years thereafter, Montana develops a periodic network assessment to ensure the effective implementation of an adequate ambient air quality surveillance system. The periodic network assessment is made available by the Department for public review and comment prior to submission to EPA.

Pursuant to its Quality Assurance Project Plans, the Department makes arrangements to operate and maintain federal reference monitors and establishes federally-approved protocols for sample collection, handling, and analysis. Air monitoring data is submitted to EPA's national "AIRS" database.

The provisions in state law for the collection and analysis of ambient air quality data are contained in the MT CAA, 75-2-101 et seq., MCA, and specifically, 75-2-112, MCA, Powers and Responsibilities of Department.

Montana's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B). Therefore, EPA is proposing to approve Montana's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS with respect to the general requirements in section 110(a)(2)(B).

3. **Program for enforcement of control measures:** Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure NAAQS are achieved, including a permit program as required in parts C and D.

To generally meet the requirements of section 110(a)(2)(C), the State is required to have

SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS. As explained elsewhere in this action, EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

PSD Requirements

With respect to Elements (C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Montana has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs (anyway sources) contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification."

The EPA is planning to take additional steps to revise federal PSD rules in light of the Supreme Court opinion and subsequent D.C. Circuit judgment. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to EPA's PSD regulations. The EPA is not expecting states to have revised their PSD programs in anticipation of the EPA's planned actions to revise its PSD program rules in response to the court decisions.

At present, the EPA has determined the State's SIP is sufficient to satisfy Elements (C), (D)(i)(II) element 3, and (J) with respect to GHGs. This is because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to "anyway sources" contain limitations on GHG emissions based on the application of BACT. The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from "anyway sources" that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of Montana's infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) element 3 and (J).

In our July 22, 2011 rulemaking titled "Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Montana" (76 FR 43918) we disapproved the Montana infrastructure SIP for the 1997 ozone NAAQS for elements (C) and (J) on the basis that Montana's SIP-approved PSD program did not properly regulate nitrogen oxides as an ozone precursor. For the same reason, we later disapproved Montana's infrastructure SIP for the 1997 and 2006 PM_{2.5} NAAQS for elements (C) and (J) in our July 30, 2013 rulemaking titled "Promulgation of State Implementation Plan Revisions; Infrastructure requirements for the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards; Montana" (78 FR 45864). On January 29, 2015, (80 FR 4793), we approved a Montana SIP revision that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated in 2005 (70 FR 71612). As a result, the approved Montana PSD program meets current requirements for ozone.

Finally, we evaluate the PSD program with respect to current requirements for PM_{2.5}. In particular, on May 16, 2008, EPA promulgated the rule, “Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” (73 FR 28321) and on October 20, 2010 EPA promulgated the rule, “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (75 FR 64864). EPA regards adoption of these PM_{2.5} rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded EPA’s 2007 and 2008 rules implementing the 1997 PM_{2.5} NAAQS. The court ordered EPA to “repromulgate these rules pursuant to Subpart 4 consistent with this opinion.” *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, “Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}),” (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of PM_{2.5} in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 Implementation rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the court’s opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court’s decision. Accordingly, EPA’s proposed approval of Montana’s

infrastructure SIP as to elements C or J with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for PM_{2.5} is contained in EPA's October 20, 2010 rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864). EPA regards adoption of the PM_{2.5} increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

On August 21, 2012, Montana submitted revisions to EPA which addressed the requirements of the 2008 PM_{2.5} NSR Implementation Rule and the 2010 Increment Rule. Portions of the 2010 Increment rule were vacated by the Federal Courts (*Sierra Club v. EPA*). EPA subsequently revised the affected NSR-PSD rules accordingly (78 FR 73698, Dec. 9, 2013). On March 24, 2015, Montana submitted revisions which addressed the Court's decision and supersedes and replaces these aspects of the August 21, 2012 submittal. These submittals are available within this docket.

In this action, we propose to approve the necessary portions of Montana's August 21, 2012 and March 24, 2015 submittals to reflect the 2008 PM_{2.5} Implementation Rule and the 2010 PM_{2.5} Increment Rule; specifically 40 CFR part 166, paragraphs (b)(14)(i),(ii),(iii), (b)(15)(i),(ii), (b)(23)(i), (b)(49)(i),(vi), and paragraph (c)(1). EPA is proposing to approve revisions to: ARM 17.8.801(3), 17.8.801(21), 17.8.801(27), 17.8.804(1), ARM 17.8.818(7)(a)(iv)-(xi), 17.8.822(9), 17.8.822(10), 17.8.822(11), 17.8.822(12), and 17.8.825(4) from the August 21, 2012 submittal. We propose no action on revisions to ARM 17.8.818(7)(a)(iii) and 17.8.820(2) because they were superseded by the March 24, 2015 submittal. We are not proposing to act on any other portions of the August 21, 2012 submittal.

EPA is proposing to approve revisions from the March 24, 2015 submittal to ARM 17.8.818(7)(a)(iii) on the condition that the State adopts and submits specific revisions within one year of EPA's final action on these infrastructure submittals; specifically to remove the phrase "24-hour average" in ARM 17.8.818(7)(a)(iii)⁴. We propose no action on ARM 17.8.820(2) because it deletes a section of the ARM which was never approved into the State's SIP. The submitted revisions make Montana's PSD program up to date with respect to current requirements for PM_{2.5}.

EPA is proposing to approve Montana's SIP for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS with respect to the requirement in section 110(a)(2)(C) to include a PSD permit program in the SIP as required by part C of the Act on the condition that the State adopts and submits revisions to ARM 17.8.818(7)(a)(iii) as previously described.

⁴ See "Section 128 and 2012 PM_{2.5} Cover Letter and PSD Commitment Letter" submitted to EPA on December 17, 2015, contained within this docket.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program was originally approved by EPA on March 22, 1972. Since approval of the minor NSR program, the State and EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

EPA is proposing to approve Montana's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement, modification, and construction of any stationary source as necessary to assure that the NAAQS are achieved.

4. **Interstate Transport:** The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called "good neighbor" provisions) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the impacts of air pollutants transported across state lines. The two elements under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (element 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (element 2) interfere with maintenance by any other state with respect to the same NAAQS. The two elements under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (element 3) to prevent significant

deterioration of air quality or (element 4) to protect visibility. In this action, EPA is addressing all four elements of CAA section 110(a)(2)(D)(i) with regard to the 2008 Pb and 2010 NO₂ NAAQS. EPA is addressing only elements 3 and 4 of CAA section 110(a)(2)(D)(i)(II) for the 2008 ozone, 2010 SO₂ and 2012 PM_{2.5} NAAQS. We will also address elements 3 and 4 for the 2006 PM_{2.5} NAAQS, because EPA did not address these elements as part of the July 30, 2013 action in which we approved elements 1 and 2 for the 2006 PM_{2.5} NAAQS (78 FR 45869). We are not addressing elements 1 and 2 for the 2008 ozone⁵ 2010 SO₂ and 2012 PM_{2.5} NAAQS in this action. These elements will be addressed in a later rulemaking.

A. Evaluation of Significant Contribution to Nonattainment and Interference with Maintenance
2008 Pb NAAQS

Montana's analysis of potential interstate transport for the 2008 Pb NAAQS discussed the lack of sources with significant Pb emissions near the State's borders. Montana's analysis is available in the docket for this action.

As noted in our 2011 Memo, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases. For this reason, EPA found that the "requirements of subsection (2)(D)(i)(I) (prongs 1 and 2) could be satisfied through a state's assessment as to whether or not emissions from Pb sources located in close proximity to their state borders have emissions that impact the neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state."⁶ In that guidance document, EPA further specified that any source appeared unlikely to contribute significantly to

⁵ EPA proposed approval of elements 1 and 2 of Montana's SIP for the 2008 ozone NAAQS in a notice published November 23, 2015 (80 FR 72937).

⁶ 2011 Memo, at pg 8.

nonattainment unless it was located less than 2 miles from a state border and emitted at least 0.5 tons per year of Pb. Montana's 110(a)(2)(D)(i)(I) analysis specifically noted that there are no sources in the State that meet both of these criteria. EPA concurs with the State's analysis and conclusion that no Montana sources have the combination of Pb emission levels and proximity to nearby nonattainment or maintenance areas to contribute significantly to nonattainment in or interfere with maintenance by other states for this NAAQS. Montana's SIP is therefore adequate to ensure that such impacts do not occur. We are proposing to approve Montana's submission in that its SIP meets the requirements of section 110(a)(2)(D)(i) for the 2008 Pb NAAQS.

2010 NO₂ NAAQS

Montana's 2010 NO₂ transport analysis for elements 1 and 2 of 110(a)(2)(D)(i) describes how sources in the State are subject to various permitting requirements. Montana asserts that these requirements prevent sources from emitting NO₂ in amounts that would contribute significantly to nonattainment or interfere with maintenance of the NAAQS in other states. The State's analysis is available in the docket for this action.

EPA concurs with the conclusion of Montana's 2010 NO₂ transport analysis. Due to Montana's limited technical analysis, EPA considered additional factors before reaching this conclusion, specifically NO₂ monitoring data from Montana and surrounding states. EPA notes that the highest monitored NO₂ design values in each state bordering or near Montana are significantly below the NAAQS (see Table 1). This fact supports the State's contention that significant contribution to nonattainment or interference with maintenance of the NO₂ NAAQS from Montana is unlikely. As shown in Table 1, the maximum design values in states bordering Montana are well below the 2010 NO₂ NAAQS. In addition, no areas in the U.S. have been

designated nonattainment for the 2010 NO₂ NAAQS. As the states near Montana are not only attaining, but also having no trouble maintaining the NAAQS, there are no areas to which Montana could significantly contribute to nonattainment or interfere with maintenance of the 2010 NO₂ NAAQS.

TABLE 1. HIGHEST MONITORED 2010 NO₂ NAAQS DESIGN VALUES

State	2012-2014 Design Value	% of NAAQS (100 ppb)
Idaho	43 ppb ⁷	43%
North Dakota	35 ppb	35%
South Dakota	38 ppb	38%
Wyoming	35 ppb	35%

* Source: <http://www.epa.gov/airtrends/values.html>

In addition to the monitored levels of NO₂ in states near Montana being well below the NAAQS, Montana's highest official design value from 2012-2014 was also significantly below this NAAQS (7 ppb).⁸

Based on all of these factors, EPA concurs with the State's conclusion that Montana does not contribute significantly to nonattainment or interfere with maintenance of the 2010 NO₂ NAAQS in other states. EPA is therefore proposing to determine that Montana's SIP includes adequate provisions to prohibit sources or other emission activities within the State from emitting NO₂ in amounts that will contribute significantly to nonattainment in or interfere with maintenance by any other state with respect to the NO₂ NAAQS.

B. Evaluation of Interference with Measures to Prevent Significant Deterioration (PSD)

⁷ Idaho's maximum design value was calculated using EPA's AirData website, at http://www.epa.gov/airquality/airdata/ad_rep_mon.html.

⁸ <http://www.epa.gov/airtrends/values.html>.

With regard to the PSD portion of CAA section 110(a)(2)(D)(i)(II), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated new source review (NSR) pollutants and that satisfies the requirements of EPA's PSD implementation rules.⁹ As noted in the discussion for infrastructure element (C) earlier in this notice, EPA is proposing to conditionally approve CAA section 110(a)(2) element (C) for Montana's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS with respect to PSD requirements. As discussed in detail in that section, Montana's PSD program will meet the current structural requirements of 110(a)(2)(C) for PM_{2.5} on the condition that the State adopts and submits specific revisions within one year of EPA's final action on these infrastructure submittals to correct the language in ARM 17.8.818(7)(a)(iii). We are also proposing to conditionally approve Montana's infrastructure SIP as meeting the 110(a)(2)(D)(i)(II) element 3 (PSD) requirements for 2006 24-hour PM_{2.5} NAAQS.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy element 3 with respect to these sources is by citing an air agency's EPA-approved nonattainment NSR provisions addressing any pollutants for which the state has designated nonattainment areas. Montana has a SIP-approved nonattainment NSR program which ensures regulation of major

⁹ See 2013 Memo.

sources and major modifications in nonattainment areas, and therefore satisfies element 3 with regard to this requirement.¹⁰

EPA is proposing to conditionally approve the infrastructure SIP submission with regard to the requirements of element 3 of section 110(a)(2)(D)(i) for the 2006 24-hour PM_{2.5}, 2008 Pb, 2008 Ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

C. Evaluation of Interference with Measures to Protect Visibility

The determination of whether the CAA section 110(a)(2)(D)(i)(II) requirement for visibility is satisfied is closely connected to EPA's regional haze program. Under the regional haze program, each state with a Class I area is required to submit a regional haze SIP with reasonable progress goals for each such area that provides for an improvement in visibility for the most impaired days and ensures no degradation of the best days. CAA section 169A.

Because of the often significant impacts on visibility from the interstate transport of pollutants, we interpret the provisions of CAA section 110(a)(2)(D)(i)(II) described above as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. This is consistent with the requirements in the regional haze program which explicitly require each state to address its share of the emission reductions needed to meet the reasonable progress goals for surrounding Class I areas. 64 FR 35714, 35735 (July 1, 1999).

Montana did not submit a regional haze SIP to EPA, which in turn required EPA to promulgate a federal implementation plan (FIP) to satisfy the regional haze requirements for the

¹⁰ See ARM 17.8.901-906.

State. EPA finalized its regional haze FIP for Montana in a rule published September 18, 2012 (77 FR 57864). Several parties filed petitions for review of the Montana regional haze FIP. In *Nat'l Parks Conservation Ass'n v. EPA*, 788 F.3d 1134 (9th Cir. 2015), the U.S. Court of Appeals for the Ninth Circuit vacated and remanded to EPA certain portions of the regional haze FIP setting NO_x and SO₂ emission limits at two facilities in Montana. EPA is currently working to address the remand of these portions of the Montana regional haze FIP in accordance with the court's decision.

In its 2008 ozone, 2010 SO₂ and 2010 NO₂ NAAQS infrastructure certifications, Montana asserted that each of these pollutants was “generally insignificant” related to impacts on visibility impairment, emitted in limited amounts in the state, and that significant impacts from each of these pollutants are “mostly located away” from state borders. In its February 10, 2010 certification for the 2006 PM_{2.5} NAAQS, the State did not directly address visibility impacts from Montana to other states, and instead generally addressed element 110(a)(2)(D)(i).

In its 2008 Pb NAAQS certification, Montana cited the 2011 Memo in noting the general insignificance of Pb-related impacts on visibility impairment, and stated that significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source. Montana affirmed that it did not contain sources with 0.5 tpy or greater lead emissions located within two miles of the State's border and therefore concluded that it met the requirements of 110(a)(2)(D)(i)(II) with respect to visibility for the 2008 Pb NAAQS.

In its 2012 PM_{2.5} NAAQS certification, Montana asserted that their Visibility Plan and FIP, which is in place to satisfy requirements of the EPA Regional Haze Program (77 FR 57863, Sept. 18, 2012), demonstrate that sources in Montana do not interfere with visibility protection in

other states. However, they acknowledge that, in accordance with EPA's 2013 infrastructure SIP guidance, a FIP cannot be relied upon to meet the requirements of element 110(a)(2)(D)(i)(II) related to visibility and therefore the requirements of element 4 are not met.

EPA disagrees with the State's assertions that NO₂, SO₂ and ozone are generally insignificant in their impacts on visibility impairment. See 77 FR at 23995, 24053-54 (EPA determined in its regional haze FIP rulemaking that Montana emissions have impacts at Class I areas in other states). Montana's claim that significant impacts from these three pollutants are located away from state borders is conclusory and not supported by relevant information or analysis. As the State does not have a fully approved regional haze SIP, and has not otherwise demonstrated that its SIP satisfies the visibility requirement of section 110(a)(2)(D)(i)(II), EPA proposes to disapprove this portion of Montana's SIP for the 2006 PM_{2.5}, 2008 ozone, 2010 NO₂ and 2010 SO₂ NAAQS. Because EPA in the Montana regional haze FIP has and will continue to address visibility impairment from Montana sources in Class I areas outside of the State, this disapproval will not require further action from the State, and does not create a new FIP obligation for EPA.

Regarding the 2008 Pb NAAQS, EPA agrees that significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source and most, if not all, Pb stationary sources are located at distances from Class I areas such that visibility impacts would be negligible. Further, when evaluating the extent to which Pb could impact visibility, EPA has found Pb-related visibility impacts insignificant (*e.g.*, less than 0.10

percent).¹¹ Montana does not have any major sources of Pb located within ten miles of a neighboring state's Class I area. EPA proposes to approve Montana's conclusion that it does not have any significant sources of lead emissions within 2 miles of its border and that it therefore does not have emissions of Pb that would interfere with the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

EPA agrees with Montana's assertion that its SIP does not satisfy the visibility requirements of section 110(a)(2)(D)(i)(II) for the 2012 PM_{2.5} NAAQS. EPA proposes to disapprove this portion of the Montana SIP.

5. **Interstate and International transport provisions:** CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

Section 126(a) of the CAA requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator of the EPA (Administrator) regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

As required by 40 CFR 51.166(q)(2)(iv), Montana's SIP-approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD.¹² This

¹¹ 2013 Memo at 33.

¹² See Administrative Rule of Montana ("ARM") 17.8.826(2)(d).

suffices to meet the notice requirement of section 126(a).

Montana has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements of CAA section 110(a)(2)(D)(ii), and EPA is therefore proposing approval of this element for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS. EPA is also proposing to approve the Montana SIP as meeting the requirements of section 110(a)(2)(D)(ii) for the 1997 and 2006 PM_{2.5} NAAQS. Montana submitted an infrastructure certification generally addressing CAA section 110(a)(2)(D) for the 1997 and 2006 PM_{2.5} NAAQS on February 10, 2010.

6. **Adequate resources:** Section 110(a)(2)(E)(i) requires states to provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof). Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under CAA section 128. Section 110(a)(2)(E)(iii) requires states to “provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.”

a. *Sub-elements (i) and (iii): Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues.*

The provisions contained in 75–2–102, MCA, 75–2–111, MCA, and 75–2–112, MCA, provide adequate authority for the State of Montana and the DEQ to carry out its SIP obligations with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along

with required state matching funds to provide funding necessary to carry out Montana's SIP requirements.

With respect to section 110(a)(2)(E)(iii), the regulations cited by Montana in their certifications (75-2-111 and 75-2-112, MCA) and contained within this docket also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve Montana's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

b. *Sub-element (ii): State boards.*

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) that any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In our July 30, 2013 action, we disapproved Montana's February 10, 2010 infrastructure SIP submission for the 1997 and 2006 PM_{2.5} NAAQS for CAA Section 110(a)(2)(E)(ii) because the Montana SIP did not contain provisions meeting requirements of CAA section 128. On December 17, 2015, EPA received a submission from the State of Montana to address the requirements of section 128. The Montana BER approved new rule language on October 16, 2015. A copy of New Rule I (ARM 17.8.150), II (ARM 17.8.151), and III (ARM 17.8.152) is

available within this docket. New Rule II Board Action addresses board composition requirements of section 128(a)(1) and New Rule III Reporting addresses conflict of interest requirements of section 128(a)(2). We propose to approve this new rule language as meeting the requirements of section 128 for the reasons explained in more detail below. Because this revision meets the requirements of section 128, we also propose to approve the State's infrastructure SIP submissions for element 110(a)(2)(E)(ii). The State made these infrastructure SIP submissions in connection with the 2012 PM_{2.5} NAAQS, but section 128 is not NAAQS-specific and once the State has met the requirements of section 128 that is sufficient for purposes of infrastructure SIP requirements for all NAAQS. If we finalize this proposed approval for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS, this will also resolve the prior disapproval for element 110(a)(2)(E)(ii) for the 1997 and 2006 PM_{2.5} NAAQS.

We are proposing to approve the State's December 17, 2015 SIP submission as meeting the requirements of section 128 because we believe that it complies with the statutory requirements and is consistent with EPA's guidance recommendations concerning section 128. In 1978, EPA issued a guidance memorandum recommending ways states could meet the requirements of section 128, including suggested interpretations of certain key terms in section 128.¹³ In this proposal notice, we discuss additional relevant aspects of section 128. We first note that, in the conference report on the 1977 amendments to the CAA, the conference committee stated, "[i]t is the responsibility of each state to determine the specific requirements to meet the

¹³ Memorandum from David O. Bickart, Deputy General Counsel, to Regional Air Directors, Guidance to States for Meeting Conflict of Interest Requirements of Section 128 (Mar. 2, 1978).

general requirements of [section 128].”¹⁴ This legislative history indicates that Congress intended states to have some latitude in adopting SIP provisions with respect to section 128, so long as states meet the statutory requirements of the section. We also note that Congress explicitly provided in section 128 that states could elect to adopt more stringent requirements, as long as the minimum requirements of section 128 are met.

In implementing section 128, the EPA has identified a number of key considerations relevant to evaluation of a SIP submission. EPA has identified these considerations in the 1978 guidance and in subsequent rulemaking actions on SIP submissions relevant to section 128, whether as SIP revisions for this specific purpose or as an element of broader actions on infrastructure SIP submissions for one or more NAAQS.

Each state must meet the requirements of section 128 through provisions that EPA approves into the state’s SIP and are thus made federally enforceable. Section 128 explicitly mandates that each SIP “shall contain requirements” that satisfy subsections 128(a)(1) and 128(a)(2). A mere narrative description of state statutes or rules, or of a state’s current or past practice in constituting a board or body and in disclosing potential conflicts of interest, is not a requirement contained in the SIP and does not satisfy the plain text of section 128.

Subsection 128(a)(1) applies only to states that have a board or body that is composed of multiple individuals and that, among its duties, approves permits or enforcement orders under the CAA. It does not apply in states that have no such multi-member board or body that performs these functions, and where instead a single head of an agency or other similar official approves

¹⁴ H.R. Rep. 95-564 (1977), reprinted in 3 Legislative History of the Clean Air Act Amendments of 1977, 526-27 (1978).

permits or enforcement orders under the CAA. This flows from the text of section 128, for two reasons. First, as subsection 128(a)(1) refers to a majority of members of the board or body in the plural, we think it reasonable to read subsection 128(a)(1) as not creating any requirements for an individual with sole authority for approving permits or enforcement orders under the CAA. Second, subsection 128(a)(2) explicitly applies to the head of an executive agency with “similar powers” to a board or body that approves permits or enforcement orders under the CAA, while subsection 128(a)(1) omits any reference to heads of executive agencies. We infer that subsection 128(a)(1) should not apply to heads of executive agencies who approve permits or enforcement orders.

Subsection 128(a)(2) applies to all states, regardless of whether the state has a multi-member board or body that approves permits or enforcement orders under the CAA. Although the title of section 128 is “State boards,” the language of subsection 128(a)(2) explicitly applies where the head of an executive agency, rather than a board or body, approves permits or enforcement orders. In instances where the head of an executive agency delegates his or her power to approve permits or enforcement orders, or where statutory authority to approve permits or enforcement orders is nominally vested in another state official, the requirement to adequately disclose potential conflicts of interest still applies. In other words, EPA interprets section 128(a)(2) to apply to all states, regardless of whether a state board or body approves permits or enforcement orders under the CAA or whether a head of a state agency (or his/her delegates) performs these duties. Thus, all state SIPs must contain provisions that require adequate disclosure of potential conflicts of interest in order to meet the requirements of subsection 128(a)(2). The question of which entities or parties must be subject to such disclosure

requirements must be evaluated by states and EPA in light of the specific facts and circumstances of each state's regulatory structure.

A state may satisfy the requirements of section 128 by submitting for adoption into the SIP a provision of state law that closely tracks or mirrors the language of the applicable provisions of section 128. A state may take this approach in two ways. First, the state may adopt the language of subsections 128(a)(1) and 128(a)(2) verbatim. Under this approach, the state will be able to meet the continuing requirements of section 128 without any additional, future SIP revisions, even if the state adds or removes authority, either at the state level or local level, to individual or to boards or bodies to approve permits or enforcement orders under the CAA so long as the state continues to meet section 128 requirements.

Second, the state may modify the language of subsections 128(a)(1) (if applicable) and 128(a)(2) to name the particular board, body, or individual official with approval authority. In this case, if the state subsequently modifies that authority, the state may have to submit a corresponding SIP revision to meet the continuing requirements of section 128. If the state chooses to not mirror the language of section 128, the state may adopt state statutes and/or regulations that functionally impose the same requirements as those of section 128, including definitions for key terms such as those recommended in EPA's 1978 guidance. While any of these approaches would meet the minimum requirements of section 128, the statute also explicitly authorizes states to adopt more stringent requirements, for example to impose additional requirements for recusal of board members from decisions, above and beyond the explicit board composition requirements. Although such recusal alone does not meet the requirements of section 128, states have the authority to require that over and above the explicit

requirements of section 128. These approaches give states flexibility in implementing section 128, while still ensuring consistency with the statute.

EPA has evaluated the New Rule I Definitions, II Board Action, and III Reporting (available within this docket) from the State in light of the requirements of section 128, these key considerations previously noted, and the recommendations in the 1978 guidance. The Montana Code creates a Board of Environmental Review (BER) which consists of seven members appointed by the Governor. A person who is directly and adversely affected by the Montana DEQ's approval or denial of a permit to construct an air pollution source may request a hearing before the BER and the BER may uphold, alter, or reverse decisions of the Montana DEQ. Similarly, a person who participated in the comment period on Montana DEQ's issuance, renewal, amendment, or modification of a title V operating permit may request a hearing before the BER and the BER may uphold, alter, or reverse decisions of the Montana DEQ. Finally, a person who receives an enforcement order from Montana DEQ under Chapter 2 of Title 75, Air Quality, may request a hearing before the BER and the BER may uphold, alter, or reverse decisions of the Montana DEQ.

As EPA has explained in other rulemaking actions, e.g., 78 FR 32613 (May 31, 2013), we interpret section 128(a)(1) to mean that boards that are the potential final decisionmaker via permit and enforcement order appeals "approve" those permits and enforcement orders. For example, by being the final decisionmaker with respect to questions such as whether a source receives a permit and the specific contents of such a permit, the board is an entity that approves the permit within the meaning of 128(a)(1). Thus, the BER is subject to the requirements of 128(a)(1).

Montana's New Rule II Board Action, provides that the BER must be composed in conformance with requirements of section 128 of the CAA for all permits and enforcement orders initiated under Montana's air pollution control authority. In essence, the rule prohibits the BER from taking action if the BER does not meet the requirements of section 128(a)(1). The State has submitted New Rule II (ARM 17.8.151) to EPA for adoption into their SIP, thus making a legally binding requirement that the BER be comprised of a majority of members that represent the public interest and do not derive a significant portion of their income from parties subject to permit requirements or enforcement orders under the CAA. The definitions of "regulated person," "represent the public interest," and "significant portion of income" are consistent with the recommendations in our 1978 guidance. We believe Montana's submission of New Rule II satisfies the requirements of subsection 128(a)(1).

To meet the requirements of subsection 128(a)(2), the State's New Rule III (ARM 17.8.152) Reporting, includes disclosure requirements applying to members of the BER. At the first meeting each calendar year, members of the BER must file with the BER secretary a written certification that they "represent the public interest"¹⁵ and do not derive a "significant portion of income" from "regulated persons" as defined in New Rule I (ARM 17.8.150) Definitions (4)(a), (b) and (c). The board member must file with the BER a written withdrawal of certification if they no longer represent the public interest or has begun to derive a "significant portion of

¹⁵ New Rule I defines "represent the public interest" as a person who "(4) does not: (a) own a controlling interest in or have five percent or more of his or her capital invested in a regulated person; (b) serve as attorney for, act as consultant for, or serve as an officer or director of a regulated person; or (c) hold any other official or contractual relationship with a regulated person."

income¹⁶” from “regulated persons,” as defined in New Rule I (5) and (3)(a) and (b).

Furthermore, board members must file with the BER a written disclosure of any “potential conflicts of interest” as defined in New Rule I (2)(a) and (b). New Rule I defines “potential conflict of interest” as “(a) any income from a regulated person; or (b) any interest or relationship that would preclude the individual having the interest or relationship from being considered one who represents the public interest.” This definition is consistent with the suggested definition in the 1978 guidance. We believe Montana’s submission of New Rule I and III satisfies the requirements of subsection 128(a)(2).

For the foregoing reasons, the EPA believes that the New Rules I (ARM 17.8.150), II (ARM 17.8.151), and III (ARM 17.8.152) adopted by the BER on October 16, 2015 and submitted to EPA for inclusion in the SIP on December 17, 2015 contains provisions that meet the requirements of section 128(a)(1) and section 128(a). Accordingly, we are proposing approval of that submission and also proposing approval of the infrastructure SIP submission as meeting the requirements of section 128 for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

7. **Stationary source monitoring system:** Section 110(a)(2)(F) requires: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such

¹⁶ New Rule I defines “significant portion of income” as “(5) ten percent or more of gross personal income for a calendar year, including retirement benefits, consulting fees, and stock dividends, except that it shall mean 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement. For purposes of this section, income derived from mutual-fund payments, or from other diversified investments as to which the recipient does not know the identity of the primary sources of income, shall be considered part of the recipient’s gross personal income but shall not be treated as income derived from persons subject to permits or enforcement orders under the Clean Air Act.”

sources; (ii) Periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and (iii) Correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

The provisions cited by Montana (ARM 17.8.105 and 17.8.106) pertain to testing requirements and protocols. Montana also incorporates by reference 40 CFR part 51, appendix P, regarding minimum monitoring requirements. (See ARM 17.8.103(1)(D)). In addition, Montana provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting

Furthermore, Montana is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar-year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Montana made its latest update to the NEI in April 2013. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website

<http://www.epa.gov/ttn/chief/eiinformation.html>.

Based on the analysis above, we propose to approve the Montana SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

8. **Emergency powers:** Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to “provide for authority comparable to that in [CAA section 303] and adequate contingency plans to implement such authority.”

Under CAA section 303, the EPA Administrator has authority to bring suit to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment.¹⁷ If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if EPA subsequently files a civil suit. We propose to find that Montana’s infrastructure SIP submittals and certain State statutes provide for authority for the State comparable to that granted to the EPA Administrator to act in the face of an imminent and substantial endangerment to the public’s health or welfare, or the environment.

Montana’s SIP submittals with regard to the section 110(a)(2)(G) emergency order requirements explain that Montana has an EPA approved Emergency Episode Avoidance Plan (EEAP) (71 FR 19, Jan. 3, 2006). According to the EEAP, “the Department shall take the

¹⁷ A discussion of the requirements for meeting CAA section 303 is provided in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM_{2.5}, 2008 Lead, 2008 Ozone, and 2010 NO₂ National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under “VI. Analysis of State Submittals, 8. Emergency powers.”

necessary precautions to protect public health as set forth in 75-2-402¹⁸, MCA, “Emergency Powers.” These precautions include, but are not limited to, ordering a halt or curtailment of any operations, activities, processes, or conditions the Department believes are contributing to the air pollutant emergency episode.” Additionally, under 75-2-111(3) MCA¹⁹, Montana’s

¹⁸ 75-2-402 MCA, Emergency Procedure:

“(1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the start of the hearing and without adjournment, the board shall confirm, modify, or set aside the order of the department.

(2) Except as provided in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for hearing and confirmation, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power that the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or the constitution or is inherent to the office.”

¹⁹ 75-2-111, MCA. Powers of board:

“The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(c) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.”

environmental review board has broad authority to “issue orders necessary to effectuate the purposes” of Chapter 2. Also, under 75-2-112(2)(a)²⁰ MCA, the DEQ has the authority to use “appropriate administrative and judicial proceedings” to enforce orders issued by the board. Any air pollution discharge that created an emergency situation would constitute a violation of the chapter and its purposes, therefore providing the BER and the DEQ authority to issue administrative orders to stop discharges that cause emergencies effecting welfare and the environment²¹.

While no single Montana statute mirrors the authorities of CAA section 303, we propose to find that the combination of MCA provisions discussed above provide for authority comparable to section 303 to immediately bring suit to restrain and issue emergency orders for applicable emergencies to take prompt administrative action against any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment. Consistent with EPA’s 2013 Infrastructure SIP Guidance, the narratives provided in Montana’s SIP submittals about the State’s authorities applying to emergency episodes (as discussed above), plus additional Montana statutes that we have considered, we propose that they are sufficient to meet the authority requirement of CAA section 110(a)(2)(G).

States must also have adequate contingency plans adopted into their SIP to implement the air agency’s emergency episode authority (as discussed above). This can be done by submitting a

²⁰ 75-2-112, MAC, Powers and responsibilities of department.

“(1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;”

²¹ See email from David Klemp, Montana State Air Director to EPA, Dec. 12, 2015, contained within this docket,

plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS if the NAAQS is covered by those regulations. EPA approved Montana's EEAP in 71 FR 19 (Jan. 3, 2006). We find that Montana's air pollution emergency rules include PM₁₀, ozone, NO₂, and SO₂; establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episode) for particulate matter, ozone, NO₂, and SO₂.

As noted in the October 14, 2011 guidance,²² based on EPA's experience to date with the Pb NAAQS and designating Pb nonattainment areas, EPA expects that an emergency episode associated with Pb emissions would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb. Accordingly, EPA believes the central components of a contingency plan would be to reduce emissions from the source at issue and communicate with the public as needed. We note that 40 CFR part 51, subpart H (51.150-51.152) and 40 CFR part 51, Appendix L do not apply to Pb.

Based on the above analysis, we propose approval of Montana's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2008 Pb, 2008 ozone, and 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

9. **Future SIP revisions:** Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) from time to time as may be necessary to take account of revisions of such national

²² "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)." Steve Page, OAQPS Director, October 14, 2011, at p 13.

primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard; and (ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this [Act].

Montana's statutory provisions in the Montana CAA at 75-2-101 *et seq.*, give the BER sufficient authority to meet the requirements of 110(a)(2)(H). Therefore, we propose to approve Montana's SIP as meeting the requirements of CAA section 110(a)(2)(H).

10. Consultation with government officials, public notification, PSD and visibility protection: Section 110(a)(2)(J) requires that each SIP "meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection)."

The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121 (see 59 FR 2988, Jan. 20, 1994). Furthermore, Montana's Emergency Episode Avoidance Plan, approved into the SIP (71 FR 19, Jan. 3, 2006), meets the general requirements of CAA section 127.

Turning to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the Act, EPA has evaluated this requirement in the context of

infrastructure element (C) in section VI.3 above. As discussed there, EPA proposes to conditionally approve Montana's infrastructure SIP for the requirement in 110(a)(2)(C) that the SIP include a permit program as required in part C, on the condition that the State adopts and submits specific revisions within one year of EPA's final action on these infrastructure submittals; specifically to remove the phrase "24-hour average" in ARM 17.8.818(7)(a)(iii). For the same reason, EPA proposes to conditionally approve Montana's infrastructure SIP with regard to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I the Act.

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we propose to approve the Montana SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS with regard to sections 121 and 127 of the CAA, and conditional approval of section 110(a)(2)(J) with regard to meeting the applicable requirements of part C relating to PSD.

11. **Air quality and modeling/data:** Section 110(a)(2)(K) requires each SIP provide for: (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the

Administrator has established a NAAQS; and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Montana's PSD program (see ARM 17.8.821(1)) requires estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, pertaining to the Guidelines on Air Quality Models. Additionally, MCA 75-2-211. Powers of board and MCA 75-2-112. Powers and responsibilities of department, provide Montana with the broad authority to develop and implement an air quality control program that includes conducting air quality modeling to predict the effect on ambient air quality of any emissions of any air pollutant for which a NAAQS has been promulgated.²³ As a result, the SIP provides for such air quality modeling as the Administrator has prescribed with respect to the SIP outside of the nonattainment areas.

Therefore, we propose to approve the Montana SIP as meeting the CAA section 110(a)(2)(K) for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

12. **Permitting fees:** Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover: (i) the reasonable costs of reviewing and acting upon any application for such a permit; and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

²³ See email from David Klemp, Montana State Air Director, to EPA on Dec. 12, 2015, contained within this docket.

Montana requires an applicant proposing to construct or modify an air pollution source to pay an application fee, ARM 17.8.504 (State rule only). Sources must also pay an annual operation fee, ARM 17.8.505 (State rule only). Under ARM 17.8.823(1), Source Information for PSD of air quality, “(1) The owner or operator of a proposed source or modification shall submit the permit application fee required pursuant to ARM 17.8.504 and all information necessary to perform any analysis or make any determination required under procedures established in accordance with this subchapter.” ARM 17.8.823 was adopted into Montana’s SIP on August 13, 2001 (66 FR 42427). Additionally, ARM 17.8.1704, Registration Fees, for oil and gas facilities states that “(1) The registration fee required by ARM 17.8.504 must be submitted to the department with each registration submitted under this subchapter. No fee is required for notifying the department, pursuant to ARM 17.8.1703(4), of changes to registration information. (2) The registration fee must be paid in its entirety at the time the registration form is submitted to the department.” ARM 17.8.1703 was adopted into the Montana SIP on November 19, 2013 (78 FR 69296).

We also note that all the State SIPs we are proposing to approve in this action cite the regulation that provides for collection of permitting fees under Montana’s approved title V permit program (65 FR 37049, June 13, 2000). As discussed in that approval, the State demonstrated that the fees collected were sufficient to administer the program.

Therefore, based on the State’s experience in relying on the funds collected through application and processing fees at ARM 17.8.504 and ARM 17.8.505, and the use of title V fees to implement and enforce PSD permits once they are incorporated into title V permits, we propose to approve the submissions as supplemented by the State for the 2008 Pb, 2008 ozone,

2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

13. **Consultation/participation by affected local entities:** Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

The statutory and other provisions cited in Montana's SIP submittals (Section 75-2-112(2)(j) of the MT CAA, ARM 17.8.140, 17.8.141 and 17.8.142, contained within this docket) meet the requirements of CAA section 110(a)(2)(M), so we propose to approve Montana's SIP as meeting these requirements for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS.

VII. What Action is EPA Taking?

In this action, EPA is proposing to approve infrastructure elements for the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂ and 1997, 2006 and 2012 PM_{2.5} NAAQS from the State's certifications as shown in Table 2. EPA is proposing conditional approval of elements (C), D(i)(II) element 3 and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title 1 of the Act as shown in Table 3. Elements we propose no action on are reflected in Table 5. EPA is proposing to disapprove (D)(i)(II) element 4 for the 2006 PM_{2.5}, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS (Table 4). As noted, finalization of this disapproval would not require further action from the State, and does not create a new FIP obligation for EPA. We also propose to approve revisions to the ARM from the August 21, 2012 submittal (Table 2) and conditionally approve a revision from the March 24, 2015 submittal (Table 3) to bring Montana's PSD program up to date with respect to current requirements for PM_{2.5}. If Montana does not submit a SIP revision to correct the language in

ARM 17.8.818(7)(a)(iii) within one year of EPA's final action on these infrastructure submittals, conditional approvals will automatically revert to disapprovals for ARM 17.8.818(7)(a)(iii), and elements (C), D(i)(II) element 3 and (J) with respect to PSD requirements. Finally, EPA is proposing to approve new ARM submitted on December 17, 2015 to satisfy requirements of element (E)(ii), state boards.

A comprehensive summary of infrastructure elements, and revisions and additions to the ARM organized by EPA's proposed rule action are provided in Table 2, Table 3, Table 4 and Table 5.

**TABLE 2. LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT
EPA IS PROPOSING TO APPROVE**

Proposed for Approval
<u>February 10, 2010 submittal – 1997 and 2006 PM_{2.5} NAAQS:</u> (D)(ii) for both the 1997 and 2006 PM _{2.5} NAAQS.
<u>December 19, 2011 submittal - 2008 Pb NAAQS:</u> (A), (B), (C) with respect to minor NSR requirements, (D)(i)(I) elements 1 and 2, (D)(i)(II) element 4, (D)(ii), (E), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
<u>January 3, 2013 submittal - 2008 Ozone NAAQS:</u> (A), (B), (C) with respect to minor NSR requirements, (D)(ii), (E), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
<u>June 4, 2013 submittal- 2010 NO₂ NAAQS:</u> (A), (B), (C) with respect to minor NSR requirements, (D)(i)(I) elements 1 and 2, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
<u>July 15, 2013 submittal – 2010 SO₂ NAAQS:</u> (A), (B), (C) with respect to minor NSR requirements, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
<u>December 17, 2015 submittal – 2012 PM_{2.5} NAAQS:</u> (A), (B), (C) with respect to minor NSR requirements, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
<u>August 21, 2012 submittal – Revisions to ARM, Prevention of Significant Deterioration:</u> ARM 17.8.801(3), 17.8.801(21), 17.8.801(27), 17.8.804(1), 17.8.818(7)(a)(iv)-(xi), 17.8.822(9), 17.8.822(10), 17.8.822(11), 17.8.822(12) and 17.8.825(4).

<p><u>December 17, 2015 submittal</u> – New Rules to ARM, CAA Section 128 New Rule I (ARM 17.8.150), II (ARM 17.8.151) and III (ARM 17.8.152).</p>

**TABLE 3 - LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT EPA
IS PROPOSING TO CONDITIONALLY APPROVE**

Proposed for Conditional Approval
<u>February 10, 2010 submittal</u> – 1997 and 2006 PM_{2.5} NAAQS: (D)(i)(II) element 3 for the 2006 PM _{2.5} NAAQS.
<u>December 19, 2011 submittal</u> - 2008 Pb NAAQS: (C) and (J) with respect to PSD, and (D)(i)(II) element 3.
<u>January 3, 2013 submittal</u> - 2008 Ozone NAAQS: (C) and (J) with respect to PSD, and (D)(i)(II) element 3.
<u>June 4, 2013 submittal</u> - 2010 NO₂ NAAQS: (C) and (J) with respect to PSD, and (D)(i)(II) element 3.
<u>July 15, 2013 submittal</u> – 2010 SO₂ NAAQS: (C) and (J) with respect to PSD, and (D)(i)(II) element 3.
<u>December 17, 2015 submittal</u> – 2012 PM_{2.5} NAAQS: (C) and (J) with respect to PSD, and (D)(i)(II) element 3.
<u>March 24, 2015 submittal</u> - Revisions to ARM, Prevention of Significant Deterioration: ARM 17.8.818(7)(a)(iii).

**TABLE 4 - LIST OF MONTANA INFRASTRUCTURE ELEMENTS THAT EPA IS PROPOSING
TO DISAPPROVE**

Proposed for Disapproval
<u>February 10, 2010 submittal</u> – 1997 and 2006 PM_{2.5} NAAQS: (D)(i)(II) element 4 for the 2006 PM _{2.5} NAAQS.
<u>January 3, 2013 submittal</u> - 2008 Ozone NAAQS: (D)(i)(II) element 4.
<u>June 4, 2013 submittal</u> - 2010 NO₂ NAAQS: (D)(i)(II) element 4.
<u>July 15, 2013 submittal</u> – 2010 SO₂ NAAQS: (D)(i)(II) element 4.
<u>December 17, 2015 submittal</u> – 2012 PM_{2.5} NAAQS: (D)(i)(II) element 4.

**TABLE 5 - LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT EPA
IS PROPOSING TO TAKE NO ACTION ON**

Proposed for No Action				
Revised Section	Reason for Proposed “No Action”			
	Revision to be made in future rulemaking action.	Revision made in a separate rulemaking action (80 FR 72937)	Revision deletes section of the ARM never approved into State’s SIP	Revision superseded by revision in March 24, 2015 State submittal
<u>January 3, 2013 submittal - 2008 Ozone NAAQS:</u>				
(D)(i)(I) elements 1 and 2.		x		
<u>July 15, 2013 submittal – 2010 SO₂ NAAQS:</u>				
(D)(i)(I) elements 1 and 2.	x			
<u>December 17, 2015 submittal – 2012 PM_{2.5} NAAQS:</u>				
(D)(i)(I) elements 1 and 2.	x			
<u>August 21, 2012 submittal – Revisions to ARM, Prevention of Significant Deterioration:</u>				
ARM 17.8.818(7)(a)(iii)				x
ARM 17.8.820(2)				x
<u>March 24, 2015 submittal - Revisions to ARM, Prevention of Significant Deterioration:</u>				
ARM 17.8.820(2)			x	

VIII. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Administrative Rules of Montana pertaining to major source permitting and PM_{2.5} emission limits discussed in section VI. 3. *Program for enforcement of control measures* and section VI. b. *Sub-element (ii): State boards*, of this preamble. The EPA

has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

IX. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks

subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: January 12, 2016.

Shaun L. McGrath,
Regional Administrator,
Region 8.

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